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**N THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**LETTERS PATENT APPEAL No. 842 of 2005**
**In**
**SPECIAL CIVIL APPLICATION No. 4337 of 2001**

**with**
**CIVIL APPLICATION No.6780 of 2005**
**in**
**LETTERS PATENT APPEAL No. 842 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**
**HON'BLE MR.JUSTICE RAVI R.TRIPATHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**EXECUTIVE ENGINEER, R & B DIVISION (STATE) & 2 - Appellant(s)**
**Versus**
**RAJENDRAPRASAD SHANKARLAL PUROHIT - Defendant(s)**

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**Appearance :**
GOVERNMENT PLEADER for Petitioner No(s).: 1,2,3.

MR MB PARIKH for Respondent No(s).: 1.
MR KM SHETH for Respondent No(s).: 1.
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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**
**and**
**HON'BLE MR.JUSTICE RAVI R.TRIPATHI**

**Date : 02/08/2005**

**ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE R.S.GARG)**

1. Heard learned counsel for the parties. It appears to be a second round of litigation before Division Bench in Letters Patent Appeal. The Labour Court answered the reference against the interest of the workman, therefore, he filed Special Civil Application No.4337 of 2001. The same was allowed by order dated 20.02.2002, against which the appellant preferred Letters Patent Appeal No.1067 of 2002. The Letters Patent Appeal came to be finally decided by order dated 07.10.2003. Division Bench did not upset or dislodge the findings recorded by the learned Single Judge, however, remitted the matter to the learned Single Judge on a limited point with a request to the learned Single Judge to consider the contention raised by the appellant as to the effect of the closure of the project during the pendency of the reference. After the matter was received back by the learned Single Judge the parties were again heard. The learned Single Judge observed that though the project was closed with effect from 19.06.1996, but in view of the circulars issued by the State Government, the petitioner who would be deemed to be in service on 19.06.1996 after the order of termination is set aside, would be entitled to be accommodated in some other project. The learned Single Judge however, also observed that the petitioner was entitled to the relief of reinstatement, because he was not appointed for the project only. Being aggrieved by the said finding recorded by the learned Single Judge, the State is again before this Court in this Letters Patent Appeal.

2. Learned counsel for the appellant submits that the findings recorded by the learned Single Judge that the workman was appointed in relation to the other works also per se is illegal, and also submits that once the project is closed, then no person can be reinstated to get benefits in the closed project. The opposite side has filed its affidavit and has opposed the appeal.

3. It is not in dispute before us that the project continued upto 19.06.1996, and much before that the petitioner was removed from the services. It is also not in dispute before us that by circular dated 19.06.1996 a direction was issued by the Government through Department of Roads & Buildings that on closure of the project, the employees working in the same are required to be accommodated elsewhere and if the vacancies available are not sufficient to accommodate all those, then such employees should be accommodated elsewhere.

4. It is trite law that when order of dismissal/ termination is set aside, then the parties are relegated to their original position and the terminated employee becomes an employee/ workman of the establishment on the date of his termination. In the present case, after the order of termination is set aside, the petitioner would become an employee of the establishment and would continue to work upto 19.06.1996. If all other persons working in the project are to be accommodated then the petitioner who would be deemed to be in service on 19.06.1996 will also have to be accommodated. The learned Single Judge even if has made some observations that the petitioner was employed for other purposes also and even if we assume that the findings/ observations are wrong, we

cannot find fault with the final findings recorded by the learned Single Judge. The learned Single Judge was absolutely justified in holding that in view of Circular dated 19.06.1996 the petitioner will have to be accommodated elsewhere.

5. We find no reason to interfere. The Letters Patent Appeal is dismissed.

6. Consequently, Civil Application No.6780 of 2005 is also disposed of.

**(R.S. GARG, J.)**

**(RAVI R. TRIPATHI, J.)**

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